

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 15087 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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RAJA COLD STORAGE THR' PARTNER RAJESH J.KAKKAD - Petitioner(s)
Versus
GUAJRAT ELECTRICITY BOARD & 1 - Respondent(s)

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Appearance :

MR MRUGESH JANI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MR MANISH K KAJI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 12/12/2005****ORAL JUDGMENT**

1. Rule. Shri Manish Kaji, learned advocate waives service of rule on behalf of the respondent - GEB. With the consent of the learned advocates for the

parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Appellate Committee of the respondent - Gujarat Electricity Board passed in Appeal No.B-46 of 2004 in dismissing the same and confirming the supplementary bill.

3. The petitioner was having electricity connection bearing Meter No.CQ 96564 and the same was inspected by the Officer of the respondent GEB and it was found by the authority that terminal cover seal was tempered with and both the meter body seals were found duplicate. It appears that the meter was sent for laboratory for inspection and thereafter, after considering the report submitted by the Laboratory Inspector, the supplementary bill for an amount of Rs.22,68,360.04 ps was issued to the petitioner treating the case as theft of the electricity energy. Being aggrieved and dissatisfied with the

supplementary bill, the petitioner preferred the appeal before the Appellate Committee of the Gujarat Electricity Board. It was specific contention on behalf of the petitioner that the meter of the petitioner was changed on 30.11.2002 and the number of meter was CQ 96564, and the number which is shown in the report is CQ 96504 which was not the number that of the petitioner and somebody's meter has been checked, for which, inspection report was submitted by the Laboratory Inspector. Considering the fact message produced by the Executive Engineer as well as the one letter of the Executive Engineer that he has physically verified the number of meter and it was found as CQ 96564 which is serial of the electrical installation of the petitioner and relied upon that the Appellate Committee held that the meter which was checked by the Laboratory Inspector was CQ 96564 and did not accept the contention of the petitioner that the some other meter has been checked and accordingly, dismissed the appeal.

4. Being aggrieved and dissatisfied with the order passed by the Appellate Committee dated 3.7.2004, the

petitioner preferred Special Civil Application No.12951 of 2004 and considering the fact that the petitioner was not given any opportunity to controvert the fax message and ascertain as to whether in fact, the meter which was checked was CQ 96504 and not CQ 96564, this Court by its judgment and order dated 30.12.2004 allowed the said special civil application and remanded the matter to the Appellate Committee for deciding the same afresh. That thereafter, on remand and after giving an opportunity to the petitioner as well as considering the other circumstantial evidence to establish that the meter which was inspected and tested by the Laboratory Inspector was CQ 96564 and there was a mistake in writing number of the meter as CQ 96504, the appellate committee confirmed the said earlier order passed by the appellate committee dated 3.7.2004 confirming the supplementary bill. Being aggrieved and dissatisfied with the order passed by the Appellate Committee passed in Appeal No.B-46 of 2005, the petitioner has preferred the present special civil application under Article 226 of the Constitution of India.

5. Shri Mrugesh Jani, learned advocate appearing on behalf of the petitioner has vehemently submitted that without any documentary evidence on record, the appellate committee believed the version of the respondent Board that the meter which was tested at the laboratory on 7.2.2004 belongs to the petitioner i.e. Meter CQ 96564. It is also further submitted that the appellate committee has relied upon the laboratory test report and the authenticity is not beyond the reasonable doubt. It is also further submitted by him that there is no reason given by the appellate committee for not believing the case of the petitioner and the appellate committee has not discussed in detail about the alleged modus operandi that might have been adopted by the petitioner and the impugned order has been passed on the basis of conjunction and surmises. It is also further submitted that M.R.I data of petitioner's meter No. CQ 96564 was not produced before the appellate committee and without producing the the M.R.I. Data the appellate committee ought not to have held against the petitioner with regard to theft of

electricity by the petitioner. The sum and substance and the main thrust of the arguments made on behalf of the petitioner is with regard to mentioning of meter No CQ 96504 in the laboratory report and according to him, the meter number of the petitioner was CQ 96564 and the said meter has not been examined by the laboratory inspector.

6. Per contra, Shri Manish Kaji, learned advocate appearing on behalf of the respondent Board while supporting both the orders dated 3.7.2004 as well as 23.5.2005 passed by the appellate committee has submitted that considering the other circumstantial evidence and the materials and as such, the appellate committee has also considered all other details including the meter body, and that seal numbers are matching in all records i.e. in Proforma-15, checking sheet dated 30.11.2002 and laboratory inspection report dated 7.2.2004 except the fact that inadvertently the number of the meter was wrongly mentioned as CQ 96504 in the checking sheet. He has also further submitted that considering the checking sheet as well as the laboratory inspection report,

the appellate committee has specifically found that it was case of theft of electricity energy by the petitioner as it was found that there was tampering with terminal code seal and both the meter body were also found duplicate and tempered with. He has also further submitted that the appellate committee has considered the chargeable days also rightly and therefore, it is requested to dismiss the present special civil application.

7. Heard the learned advocates appearing on behalf of the parties.

8. This Court remanded the matter to the appellate committee only for a specific purpose to give an opportunity to the petitioner and the Gujarat Electricity Board to establish as to whether in fact, the meter which was checked by the Checking Inspector was meter CQ 96564 or CQ 96504 as it was the contention on behalf of the petitioner that sufficient opportunity was not given to the petitioner. On appreciation of the evidence on record and after considering the fact that all other details

including the meter body seal number are matching and in all records i.e. Proforma-15, checking sheet dated 30.11.2002 and the laboratory inspection dated 7.2.2004 and on appreciation of evidence and the circumstantial and other evidences, the appellate committee has come to the conclusion that the meter which was checked and inspected by the Laboratory Inspector was meter CQ 96564 and by mistake and inadvertently the same was mentioned as meter number CQ 96504. Under the circumstances, it cannot be said that the appellate committee has committed any error and / or illegality which requires any interference of this Court exercising the powers under Article 226 of the Constitution of India. It is also pertinent to note that in the laboratory report which was signed by the representative of the petitioner without any protest and which has not been controverted by the petitioner that the Laboratory Inspection report shows that there was tampering with the terminal cover seal and both the meter body seal found with duplicate seals and tampered with.

9. Under the circumstances, the appellate committee has held that it was case of theft of electricity energy by the petitioner and considering the submissions made on behalf of the petitioner that connected load and load factor, diversity factor and chargeable days, has even partly allowed the appeal and directed to revise the supplementary bill. Under the circumstances, on merits also, there is no substance in the present special civil application.

10. For the reasons stated above, there is no substance in the present special civil application and the same is required to be dismissed and is accordingly dismissed.

11. Rule is discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

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